

87th Legislative Session – 2012

Committee: Senate Judiciary

Thursday, January 19, 2012

P - Present
E - Excused
A - Absent

Roll Call

P Tieszen, Chair
P Begalka
P Nygaard
P Vehle
P Buhl
P Hunhoff (Jean)
E Cutler, Vice-Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Craig Tieszen, Chair.

MOTION: TO APPROVE THE MINUTES OF THURSDAY, JANUARY 12, 2012

Moved by: Begalka
Second by: Buhl
Action: Prevailed by voice vote.

SB 42: revise certain provisions regarding habeas corpus.

Presented by: Marty Jackley, Office of the Attorney General
Proponents: Paul Bachand, SD State's Attorneys Association
Ken Davis, Pennington County
Ed Schaeffer, self, Black Hawk
Peggy Schaeffer, self, Black Hawk
Bob Wilcox, SD Association of County Commissioners
Opponents: Lindsey Riter-Rapp, SD Association Criminal Defense Lawyers
Steve Miller, self, Sioux Falls

MOTION: AMEND SB 42

42ra

On page 2, line 4, of the printed bill, delete "one-year" and insert "two-year".

On page 3, line 15, delete "presented" and insert "decided on the merits".

Moved by: Nygaard
Second by: Buhl
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION AMEND SB 42

42rc

On page 2, line 4, of the printed bill, delete "one-year" and insert "two-year".

Moved by: Vehle
Second by: Hunhoff (Jean)
Action: Prevailed by roll call vote. (5-1-1-0)

Voting Yes: Tieszen, Nygaard, Vehle, Buhl, Hunhoff (Jean)

Voting No: Begalka

Excused: Cutler

MOTION: AMEND SB 42

42rb

On page 2, line 4, of the printed bill, delete "by a".

On page 2, delete line 5.

On page 2, line 6, delete "or the United States".

On page 2, line 9, delete "under this chapter".

On page 2, line 12, delete "under this".

On page 2, line 13, delete "chapter".

On page 2, delete lines 18 to 20, inclusive.

On page 3, line 2, delete "~~shall~~ may" and insert "shall".

On page 3, line 7, delete everything after "." .

On page 3, delete line 8.

On page 3, line 9, delete everything before "The" .

On page 3, line 10, after "counsel" insert ", whether retained or appointed,".

On page 3, after line 16, insert:

"

Before a second or subsequent application for a writ of habeas corpus may be filed, the applicant shall move in the circuit court of appropriate jurisdiction for an order authorizing the applicant to file the application.

The assigned judge shall enter an order denying leave to file a second or successive application for a writ of habeas corpus unless:

- (1) The applicant identifies newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the applicant guilty of the underlying offense; or
- (2) The application raises a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court, that was previously unavailable. The grant or denial of an authorization by the circuit court to file a second or subsequent application shall not be appealable.

Section 6. That § 21-27-16.1 be repealed.

~~—21-27-16.1. All grounds for relief available to a petitioner under this chapter shall be raised in his original, supplemental or amended application. Any ground not raised, finally adjudicated or knowingly and understandingly waived in the proceedings resulting in his conviction or sentence or in any other proceeding that the applicant has taken to secure relief from his conviction, or sentence, may not be the basis for a subsequent application, unless the court finds grounds for relief asserted~~

~~which for reasonable cause were omitted or inadequately raised in the original, supplemental, or amended application."~~

Moved by: Hunhoff (Jean)
Second by: Begalka
Action: Prevailed by roll call vote. (4-2-1-0)

Voting Yes: Tieszen, Begalka, Vehle, Hunhoff (Jean)

Voting No: Nygaard, Buhl

Excused: Cutler

MOTION: DO PASS SB 42 AS AMENDED

Moved by: Hunhoff (Jean)
Second by: Vehle
Action: Prevailed by roll call vote. (5-1-1-0)

Voting Yes: Tieszen, Begalka, Nygaard, Vehle, Hunhoff (Jean)

Voting No: Buhl

Excused: Cutler

MOTION: CONFIRM APPOINTMENT OF DENNIS KAEMINGK OF DAVISON COUNTY, MITCHELL, SOUTH DAKOTA, TO THE POSITION OF SECRETARY OF THE DEPARTMENT OF CORRECTIONS

Presented by: Jim Seward, Department of Corrections
Dennis Kaemingk, Department of Corrections

Moved by: Vehle
Second by: Nygaard
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Tieszen, Begalka, Nygaard, Vehle, Buhl, Hunhoff (Jean)

Excused: Cutler

THE CHAIR DEFERRED SB 39, SB 41, and SB 43 UNTIL TUESDAY, JANUARY 24, 2012

MOTION: ADJOURN

Moved by: Vehle

Second by: Buhl

Action: Prevailed by voice vote.

Rena Ortbahn
Committee Secretary

Craig Tieszen, Chair